


**POLICY AND PROCEDURE**

<b><u>POLICY TITLE:</u></b> DSAMH COMMUNITY INCIDENT REPORTING POLICY	<b><u>POLICY #:</u></b> DSAMH029
<b><u>PREPARED BY:</u></b>	<b><u>DATE ISSUED:</u></b>
<b><u>RELATING POLICIES:</u></b>	<b><u>REFERENCE:</u></b> <a href="#">PM-46</a> <a href="#">PM-65</a> 42 CFR § 488.301 11 Del c. § 8564
<b><u>DATES REVIEWED:</u></b> 6/23/21	<b><u>DATES REVISED:</u></b>
<b><u>APPROVED BY:</u></b>   <small>DocuSigned by: Gregory Valentine, Associate Deputy Director, P.W.F. 3E745DFA4F3F411...</small>	<b><u>NOTES:</u></b> <input checked="" type="checkbox"/> DSAMH Internal Policy <input checked="" type="checkbox"/> DSAMH Operated Program <input checked="" type="checkbox"/> DSAMH State Providers <input type="checkbox"/> Delaware Psychiatric Center <input type="checkbox"/> Targeted Use Policy (Defined in scope)

- I. **PURPOSE:** Each individual served by the Division of Substance Abuse and Mental Health ("DSAMH") has the right to be free from abuse and neglect in their receipt of mental health and substance use disorder services. The Community Incident Reporting Policy (the "Policy") is intended to guide the identification of reportable incidents and allegations of abuse, neglect, and exploitation, which may arise in the context of community mental health and substance use disorder services. The Policy sets forth DSAMH's expectations for standardized reporting and investigative procedures. DSAMH expects all employees and contracted providers to ensure community treatment services are delivered in a respectful manner and do not create a threat to individual safety, health and/or well-being.
- II. **POLICY STATEMENT:** This policy is intended to compliment the procedure for reporting certain incidents set out by the Department of Health and Social Services ("DHSS") Policy Memorandum 46 ("PM-46"). The Departmental PM-46 process shall take precedence over this Divisional policy.
- III. **DEFINITIONS:**
- A. "Abuse": Pursuant to 42 CFR section 488.301 abuse is defined as "the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being." This definition subsumes and includes all subcategories of Abuse defined below:

- i. "Verbal Abuse" means the use of oral, written, signed or gestured language that willfully includes disparaging and derogatory terms to individuals served or their families, or within their hearing distance, regardless of their age, ability to comprehend, or disability. Examples of verbal abuse include, but are not limited to, threats of harm; and saying things to frighten an individual, such as telling them that he/she will never be able to see his/her family again.
- ii. "Sexual Abuse" means, but is not limited to, sexual harassment; sexual coercion; sexual assault such as rape, sexual molestation, sexual exploitation or inappropriate or unwanted touching of an individual by another; or any other form of sexual contact, sexual touching, or sexual penetration between a client and an employee, subcontractor, volunteer, or visitor of the treatment program, regardless of whether such interaction was consensual; or any nonconsensual client to client sexual contact.
- iii. "Physical Abuse" means the unnecessary infliction of pain or injury to an individual. Physical abuse includes, but is not limited to, striking an individual using a part of the body such as pushing, kicking, hitting, slapping, pinching, biting, punching, shoving, or pulling hair.
- iv. "Emotional Abuse" means exposing an individual to behavior that is likely to result in psychological trauma, anxiety, or depression. Emotional abuse includes, but is not limited to, humiliation, harassment, threats of harm, punishment, derogatory remarks, or deprivation. It may inflict emotional harm, invoke fear or intimidation, degrade or demean an individual. Emotional abuse may be inflicted in various ways that may or may not be verbal.
- v. "Medication Diversion" as defined in Title 16 Chapter 11, means knowingly or intentionally interrupting, obstructing or altering the delivery or administration of a prescription drug to an individual receiving services, provided that such prescription was:
  - 1. Prescribed or ordered by a licensed health care practitioner for the individual receiving services and
  - 2. The interruption, obstruction or alteration occurred without the prescription or order of a licensed health care practitioner.
  - 3. Programs must adhere to the entirety of [16 Del c. § 1131](#).
- B. "Adult Abuse Registry" means the Delaware Adult Abuse Registry, as set forth in 11 Del c. § 8564.
- C. "Bullying" means any written, digital, electronic, verbal or physical acts or actions that may elicit fear or cause harm to an individual's emotional, psychological or physical well-being. Inciting, soliciting or coercing a single entity or group to demean, dehumanize, embarrass or cause emotional, psychological or physical harm to an individual is also considered bullying.
- D. "Criminal History or Background Investigation" means the screening of applicants for employment for a history of abuse or neglect of persons in accordance with all applicable state law and federal laws.
- E. "Critical Incident" means the occurrence of events that deviate from the standards of care within a level of treatment service. Such events include but are not limited to:
  - i. Death of an individual, no matter the cause, including but not limited to natural causes, suicide, or homicide;

- ii. Suspected abuse or neglect of an individual;
  - iii. Financial exploitation of an individual (as defined below);
  - iv. Severe injury sustained by an individual that requires treatment by a medical professional in an urgent care center, emergency room, or hospital, regardless of whether it was accidental or self-inflicted;
  - v. Medication error (as defined below);
  - vi. Suspected medication diversion and/or drug diversion of an individual's prescription(s);
  - vii. Inappropriate or unprofessional conduct towards a client by a provider, including by an employee, subcontractor, or volunteer;
  - viii. Bullying by staff (as defined above in section C);
  - ix. Elopement occurring from a program such as a group home or residential treatment facility when the person's whereabouts are unknown and the police are notified or there is a likelihood of a severe injury or crime;
  - x. Suicide attempt;
  - xi. Poisoning resulting in a medical injury;
  - xii. Fire within client's primary residence;
  - xiii. Utility interruption, that has the potential to risk the health, safety, and well-being of clients;
  - xiv. Structural damage or unsafe conditions in an individual's home or place of current residence, resulting in the relocation of the client; and
  - xv. Use of Restrictive Interventions resulting in an injury.
- F. "Division of Substance Abuse and Mental Health (DSAMH)" established pursuant to 29 Del. C. § 7908, is responsible for Delaware's publicly funded system of services and supports for adults with mental health, substance use, or co-occurring disorders.
- G. "Financial Exploitation" mean the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the individual by any person or entity for any person's or entity's profit or advantage other than for the individual's profit or advantage. This includes but is not limited to:
- i. Theft of an individual's money or property;
  - ii. Use of an individual's money or property without the permission of the individual or guardian;
  - iii. Staff acceptance of an individual's money or property regardless of permission;
  - iv. Mishandling of individual money or property;
  - v. The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with an individual to obtain or use the property, income, resources, or trust funds of an individual for the benefit of a person or entity other than the individual;
  - vi. The breach of a fiduciary duty, including but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment that results in the unauthorized appropriation, sale or transfer of the property, income, resources or trust funds of the individual for the benefit of a person or entity other than the individual; and
  - vii. Obtaining or using an individual's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the

- individual lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds. (31 Del. C. §3902(11)).
- H. “General Incident” means any event, not considered a Critical Incident, but may be elevated to Critical Incident status, that adversely affects the client, including, but not limited to:
- i. psychiatric or medical hospitalization of a client;
  - ii. an emergency department visit;
  - iii. a need for urgent medical care;
  - iv. the arrest of a client;
  - v. an unexplained absence of a client from an expected standard of care, and/or may result in a risk to client health, safety and well-being;
  - vi. significant destruction of property by the client;
  - vii. adverse reactions to medication that require urgent medical care;
  - viii. bullying by another resident (as defined above in section C);
  - ix. falls without injury within residential treatment settings;
  - x. any usage of restrictive interventions;
    - 1. All incidents regarding any type of restrictive intervention needs to be reported to DSAMH and may be elevated to a critical incident.
  - xi. behaviors that have the potential to involve the legal system like unacceptable sexual behavior, physical aggression, or criminal activity; and
  - xii. self-injurious behaviors.
    - 1. Medication refusals over a period of time that may result in harm to a client must be reported to DSAMH.
- I. “Investigator” means a provider-assigned individual who has the responsibility to conduct an investigation into allegations of a Critical Incident. DSAMH Risk Manager shall review all documentation from the provider and investigate as necessary.
- J. “Medication Error” means any preventable event that may cause or lead to inappropriate medication use or patient harm while the medication is in the control of the health care professional or staff member. Such events may be related to professional practice, health care products, procedures, and systems, including prescribing; order communication; product labeling, packaging, and nomenclature; compounding; dispensing; distribution; administration; education; monitoring; and use.
- i. “Adverse Critical Event” is defined by a physical or psychological injury caused by medical management rather than by the patient's disease or condition.
- K. “Medication Refusal” means the client refusal of medication for any reason.
- L. “Neglect” means but is not limited to the following:
- i. Lack of attention to the physical needs of an individual including but not limited to toileting, bathing, meals, and safety that creates a threat to the individual's health and well-being;
  - ii. Failure to report individual health problems, changes in health problems or changes in health condition to an immediate supervisor or otherwise assist the individual in seeking appropriate treatment;
  - iii. Failure to carry out a prescribed treatment plan for an individual. Examples include, but are not limited to:
    - 1. Failure to maintain 1:1 or 2:1 observation or other special precautions on an individual for whom such precautions have been ordered;

- 2. Failure to maintain adequate staffing that may endanger client safety;
  - iv. Any act, failure to act, or omission that may cause a delay in treatment or a delay in referring an individual for emergency services; or
  - v. Failure to adequately supervise mental health, substance use disorder, or co-occurring disorder treatment and/or milieu that results in individual-individual or individual-staff altercations.
- M. "Restrictive Intervention" means an action or procedure that physically limits an individual's movement, an individual's access to other people, locations, activities, or otherwise restricts an individual's ability to move their body or change their location. Subcategories of Restrictive Intervention include:
- i. Involuntary Seclusion means the involuntary confinement of a person in a room or an area where the person is physically prevented from leaving.
  - ii. Restraint means:
    - 1. Any physical or mechanical intervention that restricts the movement or function of the individual, or a portion of the individual's body. This also includes involuntary use of medications;
    - 2. Any drug or medication when it is primarily used to restrict the individual's movement and is not a standard treatment or dosage for the individual's physical or mental condition;
    - 3. A restraint does not include orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other restrictions which are consistent with an individual's specific medical needs or otherwise permit the individual to participate in activities (including recreational, social, or of daily living) without the risk of physical harm.
- O. DSAMH Safety Committee (SC) means a DSAMH standing committee who meet at least monthly to review investigative and evidence findings pertaining to incidents of individual death; alleged incidents of individual abuse, neglect, or significant injury; standards of care violations, policy and procedures violations, and other related issues.
- IV. SCOPE:** The reporting obligations and procedures in the Policy shall apply to all DSAMH employees, all providers who are contracted with DSAMH to provide services, and DSAMH-contracted community mental health and substance use disorder provider agencies including all administrators, clinicians, other employees, subcontractors, and volunteers (collectively "Reporters").
- V. PROCEDURES/RESPONSIBILITIES:**
- A. Reporters: Reporters who have witnessed, received a verbal or written report, or who otherwise have reason to suspect that a General Incident or a Critical Incident has occurred, shall report the incident within forty-eight (48) hours, or two business days, of the General Incident or Critical Incident or the Reporter's knowledge of the General Incident or Critical Incident, whichever is earlier.
    - i. Reporters shall utilize the "DSAMH Incident/Death Reporting Form" (hereinafter "Incident Reporting Form,") for reporting General Incidents and Critical Incidents to DSAMH. The information provided by the Reporter on the Incident Reporting Form

shall include sufficient detail of the General Incident or Critical Incident, including the names of person(s) involved in the General Incident or Critical Incident, to allow DSAMH to proceed expeditiously with its own review and investigation.

- ii. Deaths, which are Critical Incidents, shall also be reported to DSAMH in the same manner as all other Critical Incidents using the Incident Reporting Form, Critical Investigation Form, and additionally, submit the DSAMH Death Report Form. Consistent with the reporting for Critical Incidents, deaths shall be reported to DSAMH within forty-eight (48) hours, or two business days, of the death or the Reporter's knowledge of the death, whichever is earlier. If a death occurs within a Group Home program, the death must be reported using all of the forms listed above for reporting a death, as well as the DHSS PM-65 Death Report Form.
- iii. The information provided by the Reporter on the Incident Reporting Form shall include sufficient detail of the death to allow DSAMH to proceed expeditiously with its own review and investigation. If, at any time, during the investigation of a death, the Investigator, DSAMH Medical Director, DSAMH Director, or designee, suspects that Abuse or Neglect by a Reporter or other Staff contributed to an individual's death, he/she shall immediately contact DSAMH Risk Management to initiate an appropriate investigation either through the PM-46 Investigative Report process or through a secondary investigation initiated by Risk Management.
- iv. Reporters are required to first ensure the physical and emotional well-being, safety and needs of the individual are addressed before initiating any related reporting.

**B. REPORTING PROCEDURES:**

- i. Reporting General Incidents to DSAMH: Reporters must report General Incidents to DSAMH within forty-eight (48) hours, or two business days, of the General Incident or the Reporter's knowledge of the General Incident, whichever is earlier. General Incidents must be reported to DSAMH using the Incident Reporting Form. The Incident Reporting Form should be emailed to DSAMH Risk Management at [complaintandincidentreporting@delaware.gov](mailto:complaintandincidentreporting@delaware.gov). The Reporter shall also document the General Incident in the individual's medical record progress notes.
- ii. Reporting Critical Incidents to DSAMH:
  - 1. Reporters must report Critical Incidents to DSAMH within forty-eight (48) hours, or two business days, of the General Incident or the Reporter's knowledge of the Critical Incident, whichever is earlier. Reporters shall complete the Incident Reporting Form and email to DSAMH Risk Management at [complaintandincidentreporting@delaware.gov](mailto:complaintandincidentreporting@delaware.gov). The Reporter shall also document the incident in the individual's medical record progress notes.
  - 2. When reporting deaths, Incident Reporting Form should be completed by a healthcare professional whenever practicable. Otherwise, the reporting of deaths should follow the same procedure as all other Critical Incident reporting.
- iii. Reporting Suspected Crimes to the Police:
  - 1. If Staff reasonably believe that a crime has occurred in the course of a General Incident or Critical Incident, Staff shall immediately call 911.
  - 2. Only law enforcement is authorized to collect evidence of a suspected crime.

**C. INVESTIGATIVE PROCESS:**

- i. If a Community Provider is required to complete a PM-46 Investigative Report. The Community Provider will still need to complete and submit the Incident Reporting Form, and then the Community Provider will follow the PM-46 process.
  - ii. If the Critical Incident occurred in a program that is not mandated to follow PM-46 process:
    - 1. The Community Provider will report the Critical Incident using the Incident Reporting Form.
    - 2. DSAMH Quality Assurance will assign DSAMH Risk Management to the Critical Incident.
    - 3. The Community Provider will immediately begin its own investigation of the Critical Incident, consistent with this policy. The provider shall have ten (10) business days to complete their investigation and submit their findings.
    - 4. Once the investigation by the Community Provider is concluded, the Community Provider will submit the DSAMH Community Provider Critical Incident Investigation Reporting Form (hereinafter "Investigation Report,") to DSAMH Risk Management for review.
    - 5. DSAMH Risk Management will review the Investigation Report. Risk Management's documented conclusions, as well as any provider suggested corrective actions or risk mitigations, will be submitted to the Safety Committee for final review, additional recommendations, and approvals.
    - 6. The DSAMH Medical Director and/or Safety Committee will review the documentation and make recommendations for future actions. DSAMH Risk Management will follow-up to ensure actions are being corrected by a Community Provider:
    - 7. The DSAMH Quality Assurance Unit ("QA") will notify the Community Provider of the resolution of the investigation, any recommended corrective actions, and, if applicable, DSAMH's intent to forward the incident to DHCQ or any other State agencies for additional review.
  - iii. The Community Provider shall make available to DSAMH, during reasonable business hours any Staff that DSAMH believes it needs to speak with or any facilities DSAMH believes it needs to visit to follow up any Critical Incident.
  - iv. DSAMH Risk Management will log each Critical Incident investigation and create a folder that may include:
    - 1. Incident Reporting Form on which the original report was provided;
    - 2. Documentation of any further investigation by DHCQ and any actions or recommendations from DHCQ;
    - 3. Documentation of the contracted provider's completion of corrective actions; and,
    - 4. Risk Management's report, which will include a summary of facts, any accompanying evidence, conclusions and recommendations for follow up or corrective actions.
  - v. DSAMH Risk Management will label each Incident Reporting Form and Investigation Report as "Confidential and Privileged pursuant to 24 Del. C., § 1768."
- D. CORRECTIVE ACTIONS

- i. DSAMH QA will approve corrective actions of a Community Provider and provide associated timelines for any additional and/or recommended corrective actions that result from a critical incident investigation. Failure of a provider agency to implement a corrective action plan may result in financial sanctions or other consequences as allowed by the Community Provider's contract with DSAMH.
- ii. DSAMH QA will monitor a Community Provider's compliance with recommended corrective actions.
- iii. DSAMH may recommend immediate corrective action of any problems relating to the immediate health and welfare of clients.

E. REVIEW OF CRITICAL INCIDENT DATA AND INVESTIGATIONS

- i. Community Providers shall prepare for DSAMH an annual report of all Critical Incidents. This annual report shall summarize the number, type, and outcome of all Critical Incidents. The report will be sent to the DSAMH QA thirty (30) days before the close of the fiscal year.
- ii. The Safety Committee will review data on Critical Incidents on at least a quarterly basis.
- iii. The Safety Committee may review any specific Critical Incident Investigation Report as it determines appropriate or as requested by the DSAMH Division Director, DSAMH Medical Director, or DSAMH Performance Improvement Director.
- iv. Based on its review, the Safety Committee may make recommendations to the DSAMH Division Director for corrective actions, performance improvement initiatives, or specific actions by providers.

F. CONFIDENTIALITY

- i. In carrying out the Policy, all Community Providers, Reporters, and Staff must protect the confidentiality of records and persons involved in any General Incident or Critical Incident, consistent with the Health Information Portability and Accountability Act (45 CFR Part 160, 164) and 16 Del. C. §§ 1210-1213. Any records transmitted pursuant to the Policy are exempt from Delaware's Freedom of Information Act ("FOIA"), pursuant to 24 Del. C. § 1768 and 29 Del. C. Ch. 100.

**VI. Policy Lifespan:** This policy is reviewed annually and updated as required dependent on state licensure standards or Medicaid Certification changes.

**VII. Attachments:** DSAMH Incident/Death Reporting Form; DSAMH Community Provider Critical Incident Investigation Reporting Form; DSAMH Death Review Form; PM-46 Investigative Report Form; DHSS PM-65 Death Report Form.

**VIII. References/Resources:** See Reference section above for Delaware state code reference and Delaware Medicaid Reimbursement Manual Reference.